



# Tips for navigating the new Simplified Procedure

*Juda Strawczynski, Director, practicePRO*  
*Audrey P. Ramsay, Lawyer, Blouin Dunn, member of the Civil Rules Committee*

Significant changes to the Superior Court Simplified Procedure came into effect on January 1, 2020. Budget Bill 2019 amended section 108 of the *Courts of Justice Act* to eliminate trials by jury under the Simplified Procedure. Regulatory changes filed October 23, 2019 unveiled significant further changes to the Simplified Procedure as prescribed by [Rule 76](#) of Ontario's Rules of Civil Procedure. Both the amendments to the *Courts of Justice Act* and to Rule 76 took effect on January 1, 2020.

With the elimination of juries, increased monetary jurisdiction of \$200,000, streamlined processes, and cap on costs and disbursements, more actions commenced in Superior Court will proceed by Simplified Procedure. This article highlights some key changes, and practice management tips to help lawyers navigate the new terrain.

The Simplified Procedure regime features several key changes effective January 1, 2020, including:

- **A new \$200,000 claim limit**

The monetary jurisdiction has doubled from \$100,000 to \$200,000 exclusive of interest. With the [Small Claims Court limit increasing to \\$35,000](#), the Simplified Procedure can be used for claims between \$35,000 and \$200,000.

- **Cap on costs and disbursements**

Subrule 76.12.1(1) states that except as provided under subrule 76.13 (regarding costs consequences) or an Act, no party may recover costs exceeding \$50,000 or disbursements exceeding \$25,000, exclusive of HST. However, costs are still in the jurisdiction and at the discretion of the trial judge.

Under subrule 76.12.1(2), the limits on costs do not apply to actions commenced before January 1, 2020.

- **Increased time for oral discovery**

Each party will have up to three hours for examination for discovery, up from the 2-hour limit.

- **Trials are capped at 5 days**

To facilitate the timely resolution of claims, trials are limited to five days. The trial judge has no discretion to extend the duration of the trial.

- **No jury trials**

Actions proceeding by Simplified Procedure will no longer have jury trials.

Where a claim under the Simplified Procedure involves a claim for slander, libel, malicious arrest, malicious prosecution or false imprisonment, a party can serve a jury notice, with a notice (Form 76A) stating that the action and any related proceedings are continued as an ordinary action (See new subrule 76.02.1).

An action assigned to case management may not continue under Rule 76 (subrule 76.02(5)(d)).

For cases where a jury notice was served before January 1, 2020, the action can proceed with a jury under the Simplified Procedure (See new Rule 76.14).

- **No summary trials**

The Rule 76 “summary trial” procedure is revoked. As of January 1, 2020, all Simplified Procedure trials will follow the new path to trial and trial process as described below.

### **The new path to trial and trial process**

The new Rule 76 Simplified Procedure path to trial features several new elements, including:

- **Use of experts**

An expert report served must be appended to the expert’s affidavit, in which the expert adopts the report for the purpose of giving it as evidence in the action.

A party intending to call expert evidence must still also comply with Rule 53.03 which governs the timing of the delivery of expert reports before a pre-trial conference and the content of the expert report.

- **Pre-trial conference scheduling is now the responsibility of the parties**

The parties are now responsible for scheduling the pre-trial conference. The registrar previously served notice of a pre-trial schedule. As of January 1, 2020, the parties must now schedule the pre-trial conference under Rule 50.02.

Under Rule 50.02, the parties must schedule a date for the parties to attend a pre-trial conference within 180 days after the action is set down for trial at a time acceptable to all parties, unless the court orders otherwise. (If the parties fail to do so, the registrar will schedule a pre-trial conference, subject to any previous order.)

- **New required proposed trial management plan, with trials not to exceed 5 days**

The parties must agree to a proposed trial management plan at least 30 days before a pre-trial conference. It should include:

- A list of every witness, including expert witnesses; and
- A detailed time allocation setting out the time for each party for their opening statements, evidence in chief by affidavit (under Rule 31.11), cross-examination, re-examination and oral argument.
- The time allocation “shall” not exceed five days.

- **The pre-trial conference**

There are new documents required to be filed five days before the pre-trial conference including a proposed trial management plan, any expert affidavit, other than a supplementary expert affidavit, and a statement not exceeding three pages setting out the issues and party’s position.

The pre-trial conference judge or case management master will either review and approve or amend the proposed trial management plan. However, the new rule expressly states that any changes are “subject to the requirement that the duration of the trial not exceed five days” (Subrule 76.10(5)).

A case management master or pre-trial conference judge will set the number of witnesses each party may call, fix dates for the delivery of any witness affidavits including expert affidavits, and fix the date for trial (subject to the direction of the regional senior judge).

- **New trial procedure**

New subrule 76.12(1) sets out the new procedure governing the conduct of a trial proceeding under the Simplified Procedure. The trial process is now mandated, and counsel headed to trial should familiarize themselves with the requirements.

A trial judge may vary a time in a trial management plan except the duration of trial exceeding five days.

## **Practice Management Tips**

Lawyers should consider the effect that the new Simplified Procedure will have on ongoing and potential new actions.

- **Consider both the monetary jurisdiction and the new five day trial limit**

- Trials under Simplified Procedure must be completed within five days. There will be cases which fall within the monetary jurisdiction for Simplified Procedure, but where the ordinary procedure may be more appropriate.
  - Be realistic when considering whether five days for trial is likely to be sufficient. Consider, for example:
    - The issues that may need to be determined. Are there facts in dispute? Are liability or damages at issue?
    - The number of parties and level of sophistication of the parties
    - The number of witnesses, including expert witnesses
    - The complexity of the case in general
- **For cases already proceeding under Simplified Procedure**
    - Consider the effect that the changes to Rule 76 will have on your case and whether you need to update your strategy or timelines to prepare for trial.
    - Advise your client of the new procedure, and discuss how the changes may affect the case. Ensure that you and your client are on the same page on how to move forward in the new environment.
    - Discuss the new cost rules, as they may affect your client's exposure and ability to recover costs.
    - If the matter has been set down for trial, and is not already scheduled for a pre-trial conference, work with the parties to schedule one.
    - Update your calendar and tickler system to reflect any new deadlines (e.g., expert reports, pre-trial conference scheduling, trial management plan)
  - **For cases already commenced seeking damages over \$100,000 to \$200,000**

Have a conversation with your client about the new Simplified Procedure.

Consider whether it may be appropriate to transfer the case to Simplified Procedure, or continue under this rule. Your recommendation may depend on several factors, including the value of the claim, liability, complexity, the stage of the proceeding, and any tactical advantages to proceeding under Rule 76. Consider potential cost consequences for proceeding by regular action given the newly available Simplified Procedure for such claims.

Here again, if you're taking new steps, update your calendar and tickler systems to include all new steps, and get moving!

- **For potential claims over \$200,000**

Where a claim may be marginally north of \$200,000, lawyers may want to consider the benefits and drawbacks of abandoning an interest in any amount above \$200,000. If

abandoning any claim for higher amounts, make sure this is understood by your client. Confirm obtaining instructions related to abandoning amounts in writing.

Ensure that the client understands the limits on costs and disbursements, and depending on the case, any potential exposure to either, and confirm the client's understanding and your instructions in writing.

The trial judge does not appear to have any discretion to vary the length of trial beyond five days. Ensure that any case taken to trial will be completed in five days to avoid unanticipated costs to the client.

- **For all cases**

**Maintain a file progress plan:** Maintain a file progress plan, including a list of all the steps that need to be undertaken. Diarize to regularly review the plan and update it as necessary. For key changes, check in with your client and confirm your instructions. practicePRO has developed a [sample file progress plan](#).

**Use checklists:** Use checklists to make sure that you're on track. The practicePRO [Client Trial Preparation Checklist](#) is a customizable checklist to prepare your client for the ups and downs of trial, and to address a range of issues with your client, including process, timing, outcomes, risks and costs.

**Use your calendar, tickler and office management system to keep moving**

- Ensure that your tickler system is effective and that all staff are comfortable using the system
- Build in key deadlines, and set ticklers in advance to keep you moving towards the deliverable
- Don't forget to build in extra time for steps requiring consent of all parties, such as scheduling the pre-trial conference and developing a proposed trial management plan
- Build in some cushion on deadlines

**Identify your experts early and work with them effectively**

- Identify your potential experts as soon as possible
- For tips on how to work with experts and keep within budget see The American Bar Association article [7 Tips to Reduce Your Expert Witness Budget](#)
- Diarize the timelines for serving and receiving expert reports
- Ensure that your expert signs the Form 53 acknowledgement of the expert's duty

The new Simplified Procedure seeks to provide a more streamlined process to resolve claims up to \$200,000. Lawyers need to adapt to the faster environment and manage clients, experts, and costs effectively. As always, clear and regular client communication will be vital. Working with your client and by using practice management resources such as those described above, you will be able to effectively move cases to resolution through this new process.

This resource is provided by Lawyers' Professional Indemnity Company (LAWPRO®). The material presented does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.

© 2020 Lawyers' Professional Indemnity Company (LAWPRO). All rights reserved.  
\* Registered trademark of Lawyers' Professional Indemnity Company



lawpro.ca  
Tel: 416-598-5800 or 1-800-410-1013  
Fax: 416-599-8341 or 1-800-286-7639  
Email: [practicepro@lawpro.ca](mailto:practicepro@lawpro.ca)